

1 **P O R T E R | S C O T T**

2 A PROFESSIONAL CORPORATION

3 William E. Camy, SBN 291397

4 David R. Norton, SBN 291448

5 Alison J. Southard, SBN 335716

350 University Avenue, Suite 200

Sacramento, California 95825

5 TEL: 916.929.1481

6 FAX: 916.927.3706

7 wcamy@porterscott.com

8 dnorton@porterscott.com

9 asouthard@porterscott.com

10 Attorneys for Defendant, COUNTY OF AMADOR

11 **UNITED STATES DISTRICT COURT**
12 **EASTERN DISTRICT OF CALIFORNIA**

13 ERIN BUCHANAN, an individual,

14 Plaintiff, **No. 2:20-cv-2428 JAM DB**

15 vs.

16 COUNTY OF AMADOR, and DOES 1-10
17 inclusive,

18 Defendants.

19 _____/

20 Plaintiff ERIN BUCHANAN and Defendant COUNTY OF AMADOR (“Defendant”), by and
21 through their respective counsels, hereby stipulate and in good faith believe that documents potentially
22 within the scope of discovery for the instant matter, including but not limited to the documents identified
23 below that have been requested by Plaintiff, are subject to protection pursuant to Fed. R. Civ. P. 26(c).
24 The terms of this protective order shall apply to the items listed below and any future production of
25 confidential documents that Defendant—or Plaintiff—may designate in good faith to be confidential.
26

27 // /

1 **STIPULATION AND PROTECTIVE ORDER**

2 Defendant takes the position that certain personnel records of its current and former employees are
3 confidential subject to protection pursuant to Fed. R. Civ. P. 26(c). Plaintiff has requested some of those
4 records in discovery.

5 **A. DEFINITIONS**

6 The following definitions shall apply to this Protective Order:

7 1. The “Action” shall mean and refer to the above-captioned matter and to all actions now or
8 later consolidated with the Action, and any appeal from the Action and from any other action consolidated
9 at any time under the above-captioned matter, through final judgment.

10 2. “Documents” or “Confidential Documents” shall mean the Documents that Defendants or
11 Plaintiff designate as “Confidential” in the manner set forth in this Protective Order.

12 3. “Confidential” shall mean information designated “Confidential” pursuant to this
13 Protective Order. Information designated “Confidential” shall be information that is determined in good
14 faith by the attorneys representing the Designating Party to be subject to protection pursuant to Fed. R.
15 Civ. P. 26(c). Confidential Documents, material, and/or information shall be used solely for purposes of
16 litigation. Confidential Information shall not be used by the non-Designating Party for any business or
17 other purpose, unless agreed to in writing by all Parties to this action or as authorized by further order of
18 the Court.

19 4. “Defendant” shall mean COUNTY OF AMADOR.

20 5. “Plaintiff” shall mean ERIN BUCHANAN.

21 6. “Parties” shall mean Plaintiff and Defendant, identified above.

22 **B. TERMS OF THE PROTECTIVE ORDER**

23 IT IS HEREBY STIPULATED by, among and between the parties through their counsel of record,
24 that the following terms apply to documents designated as “Confidential” by Defendant or Plaintiff and
25 produced subject to the following Protective Order:

26 1. The Confidential Documents shall be used solely in connection with the civil case
27 *Buchanan v. County of Amador*, Case No.: 2:20-CV-02428-JAM-DB, and in the preparation and trial of
28 the case. The Parties do not waive any objections to the admissibility of the documents or portions thereof
in future proceedings in this case, including trial.

1 2. The “Designating Party” will designate the Confidential Documents as confidential by
2 affixing a mark labelling them “Confidential.”

3 3. The Confidential Documents may only be disclosed to the following persons:

4 (a) Counsel for Plaintiff, including partners and associate attorneys in his office, as counsel
5 for Plaintiff in this case;

6 (b) Counsel for Defendant, including partners and associate attorneys in his office, as counsel
7 for Defendant in this case;

8 (c) Paralegal, clerical, and secretarial personnel regularly employed by counsel referred to in
9 subparts (a) and (b), including stenographic deposition reporters or videographers retained in connection
10 with this action;

11 (d) Court personnel, including stenographic reporters or videographers engaged in proceedings
12 as are necessarily incidental to the preparation for the trial in the civil action;

13 (e) Any expert, consultant, or investigator retained in connection with this action, however,
14 such persons must be advised of and abide by this protective order;

15 (f) The finder of fact at the time of trial, subject to the court’s rulings on *in limine* motions and
16 objections of counsel;

17 (g) Witnesses during their depositions in this action. If confidential documents are used in the
18 deposition, the documents must be identified as “Confidential” and the portion of the deposition in which
19 the documents are described should also be considered confidential; and

20 (h) The parties to this action and any representatives acting on their behalf for this action.

21 4. If the Confidential Documents are filed with any motion or other pleading, a party may
22 seek permission from the Court to file the Confidential Documents under seal according to Local Rule
23 141. If permission is granted, the Confidential Documents will be filed and served in accordance with
24 Local Rule 141.

25 5. The designation of the Confidential Documents as “Confidential” and the subsequent
26 production thereof is without prejudice to the right of any party to oppose the admissibility of the
27 Confidential Documents or information contained therein.

28 6. Any party or non-party may challenge a designation of confidentiality at any time. A party
or non-party does not waive its right to challenge a confidentiality designation by electing not to mount a

1 challenge promptly after the original designation is disclosed. The Challenging Party shall initiate the
2 dispute resolution process by providing written notice of each designation it is challenging and describing
3 the basis for each challenge. The parties shall attempt to resolve each challenge in good faith and must
4 begin the process by conferring directly (in voice-to-voice dialogue; other forms of communication are
5 not sufficient) within seven (7) days of the date of receiving notice of the challenge. In conferring, the
6 Challenging Party must explain the basis for its belief that the confidentiality designation was not proper
7 and must give the Designating Party an opportunity to review the designated material, to reconsider the
8 circumstances, and, if no change in designation is offered, to explain the basis for the chosen designation.
9 A Challenging Party may proceed to the next stage of the challenge process only if it has engaged in this
10 meet and confer process first or establishes that the Designating Party is unwilling to participate in the
11 meet and confer process in a timely manner. If the Parties cannot resolve a challenge without Court
12 intervention, the Designating Party may file and serve a motion for protective order pursuant to Fed. R.
13 Civ. P. 26(c) and E.D. Cal. L.R. 251 within twenty-one (21) days of the initial notice of challenge. Failure
14 by the Designating Party to make such a motion within twenty-one (21) days shall automatically waive
15 the "Confidential" designation for each challenged designation. In addition, the Challenging Party may
16 file a motion challenging a confidentiality designation at any time if there is good cause for doing so. The
17 burden of persuasion in any such challenge proceeding shall be on the Designating Party. Unless the
18 Designating Party has waived the confidentiality designation by failing to file a motion to retain
19 confidentiality as described above, all parties shall continue to afford the material in question the level of
20 protection to which it is entitled under the Designating Party's designation until the Court rules on the
21 challenge.

22 7. Notwithstanding the provisions of Paragraph 3, the Confidential Documents and
23 information contained therein may not be delivered, exhibited or otherwise disclosed to any reporter,
24 writer or employee of any trade publication, newspaper, magazine or other media organization, including
25 but not limited to radio and television media, provided that the Challenging Party has not obtained, by
26 challenge or otherwise, the removal of the confidentiality designation from the Confidential Documents.

27 8. Should the Confidential Documents or any information contained therein be disclosed,
28 through inadvertence or otherwise, to any person not authorized to receive it under this Protective Order,
the disclosing person(s) shall promptly (a) inform counsel for the Defendants of the recipient(s) and the
{02713716.DOCX}

1 circumstances of the unauthorized disclosure to the relevant producing person(s) and (b) use best efforts
2 to bind the recipient(s) to the terms of this Protective Order.

3 9. The Confidential Documents shall not lose its confidential status because it was
4 inadvertently or unintentionally disclosed to a person not authorized to receive it under this Protective
5 Order.

6 10. After the conclusion of this litigation, the Confidential Documents will remain confidential,
7 unless the Challenging Party has obtained removal of the confidentiality designations. "Conclusion" of
8 this litigation means a termination of the case following a trial, settlement, or dismissal of the Action with
9 prejudice for any other reason.

10 11. This Stipulated Protective Order shall remain in full force and effect and shall continue to
11 be binding on all parties and affected persons until this litigation terminates, subject to any subsequent
12 modifications of this Stipulated Protective Order for good cause shown by this Court or any Court having
13 jurisdiction over an appeal of this action. Upon termination of this litigation, the parties agree the
14 Stipulated Protective Order shall continue in force as a private agreement between the parties, unless the
15 Challenging Party has obtained removal of the confidentiality designations from certain documents.

16 13. During the pendency of this lawsuit, the Court shall (a) make such amendments,
17 modifications and additions to this Protective Order as it may deem appropriate upon good cause shown;
18 and, (b) adjudicate any dispute arising under it.

19 **IT IS SO STIPULATED.**

21 Dated: June 7, 2022

22 PORTER SCOTT
23 A PROFESSIONAL CORPORATION

25 By: /s/ William E. Camy

26 William E. Camy
27 Attorney for COUNTY OF AMADOR

1 Dated: June 7, 2022

2 MAYALL HURLEY, APC

3 *By /s/ William J. Gorham (authorized on 6/7/22)*

4 William J. Gorham III

5 Nicholas F. Scardigli

6 Vladimir J. Kozina

7 Attorneys for Plaintiff

ORDER

Pursuant to the parties' stipulation, IT IS SO ORDERED.

IT IS FURTHER ORDERED THAT:

1. Requests to seal documents shall be made by motion before the same judge who will decide the matter related to that request to seal.

2. The designation of documents (including transcripts of testimony) as confidential pursuant to this order does not automatically entitle the parties to file such a document with the court under seal.

Parties are advised that any request to seal documents in this district is governed by Local Rule 141. In brief, Local Rule 141 provides that documents may only be sealed by a written order of the court after a specific request to seal has been made. L.R. 141(a). However, a mere request to seal is not enough under the local rules. In particular, Local Rule 141(b) requires that “[t]he ‘Request to Seal Documents’ shall set forth the statutory or other authority for sealing, the requested duration, the identity, by name or category, of persons to be permitted access to the document, and all relevant information.” L.R. 141(b).

3. A request to seal material must normally meet the high threshold of showing that “compelling reasons” support secrecy; however, where the material is, at most, “tangentially related” to the merits of a case, the request to seal may be granted on a showing of “good cause.” Ctr. for Auto Safety v. Chrysler Grp., LLC, 809 F.3d 1092, 1096-1102 (9th Cir. 2016); Kamakana v. City and County of Honolulu, 447 F.3d 1172, 1178-80 (9th Cir. 2006).

4. Nothing in this order shall limit the testimony of parties or non-parties, or the use of certain documents, at any court hearing or trial – such determinations will only be made by the court at the hearing or trial, or upon an appropriate motion.

5. With respect to motions regarding any disputes concerning this protective order which the parties cannot informally resolve, the parties shall follow the procedures outlined in Local Rule 251. Absent a showing of good cause, the court will not hear discovery disputes on an ex parte basis or on shortened time.

6. The parties may not modify the terms of this Protective Order without the court's approval. If the parties agree to a potential modification, they shall submit a stipulation and proposed order for the court's consideration.

7. Pursuant to Local Rule 141.1(f), the court will not retain jurisdiction over enforcement of the terms of this Protective Order after the action is terminated.

8. Any provision in the parties' stipulation that is in conflict with anything in this order is hereby DISAPPROVED.

DATED: June 10, 2022

/s/ DEBORAH BARNES

UNITED STATES MAGISTRATE JUDGE